JUN

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 985

GRANT W. SMITH,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Petitioner's Reply to Brief in Opposition

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UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL., LA REVIEW 5-6581

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The government's brief does not satisfactorily answer our contention that the method of selection of jurors in the petitioner's case deprived him of a trial by a jury fairly representative of the community. In our reply we shall deal with those portions of the government's argument which require an answer.

The petition challenging the array of the petit jurors alleged that at another trial in the same District at a similar hearing*, the evidence disclosed the following:

During the years 1954, 1955 and 1956, the Clerk of the United States District Court sent letters requesting names for prospective jurors to three churches composed of Negro membership only and to four small town postmasters. During the period from 1950 to 1957, the clerk selected jurors from eight lists of names totaling approximately one thousand names. He was unable to state how old these lists were. In addition to these lists, he accepted as jurors persons recommended by former jurors, volunteers, and those recommended by the personnel of the office of the United States Attorney. Although the population of the Northern District of Illinois exceeds six million persons, jury panels are selected from a list of prospective jurors never exceeding two thousand names. The government failed to answer the petition.

The evidence introduced on the hearing on the motion challenging the array of the petit jury in the present case supported the allegations contained in the petition. The testimony of the clerk showed that approximately sixty percent of all persons selected by the clerk to serve as jurors were chosen by recommendation of former jurors, postmasters and volunteers, and the balance of the jurors came from certain special lists. The clerk also testified that he had in the past written to various churches, labor organizations, fraternal organizations and parent teachers associations for names of prospective jurors, but that these organizations did not always answer. He made no further effort to communicate with those organizations that failed to respond, with the exception of the Chicago Urban League.

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*United States of America v. Daniel Considine, et al., No. 54 CR 585. The defendants were acquitted.

The testimony of the clerk shows clearly that jurors were chosen from a limited sphere. For if one were not a church member, an Elk, a war veteran, a member of a union or a member of a parent-teacher's association, he would be excluded from jury service. Names of prospective jurors selected in this manner did not constitute a true cross section of the community. The clerk in asking these groups to furnish him with names to be used for prospective jurors, improperly delegated the duty of jury selection to others.

The evidence shows that the organizations from which the clerk selected names of prospective jurors were less than the number stated by the government in their brief. The record shows that although the clerk may have written to various organizations for names, he made his selections merely from lists of parents of students of parochial schools, members of St. Kilian's Society and parent-teachers' associations, given to him by his secretary and wife. (R. 12)

No matter how the government in its argument may stretch the number of the groups from which the clerk selected jurors, the fact remains that unless one did belong to a particular association and his name was selected by some one connected with this association, he would not be called for jury service. This vicious practice perpetuates itself through the system of recommendations of jurors previously chosen from a small select portion of the population.

The government fails to answer our contention that the use of volunteers for jury service which is prohibited by the State of Illinois and punishable as contempt of court, deprived the petitioner of a fair cross section of the population. The use of volunteers is a method which is

capable of harboring much evil. It would permit organizations that may have a particular interest in certain litigation to volunteer in such numbers as to improperly weigh the number of names in the jury box.

It is argued by the government that any legally disqualified juror could have been challenged for cause. This statement which is taken from the opinion of the Court of Appeals in this case thereby admits that a volunteer juror is disqualified from serving on the jury. The objection to the venire on the grounds that a large number of jurors were volunteers was known to the trial court but he nevertheless denied the challenge to the array. It is therefore unlikely that the trial court would have permitted a challenge for cause to any volunteer juror.

The government's reasoning is contrary to the holding of this court in the case of *Thiel* v. *Southern Pacific Company*, 328 U.S. 217 where it was held that it is immaterial that the jury which actually decided the factual issue in the case conformed or did not conform to the requirement that it represent a true cross section of the community, the evil lies in the wholesale exclusion of the majority of the population of the district from jury service.

Respectfully submitted,

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